ORIGINAL

Supreme Court, U.S.
FILED
OCT 1 1984
ALEXANDER L. STEVAS
CLERK

No. 84-177

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

-vs-

JAMES HAMMOCK, JR.,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STEVEN CLARK
Deputy Defender

PATRICIA UNSINN
Assistant Appellate Defender
Office of the State Appellate Defender
109 North Dearborn Street
8th Floor
Chicago, Illinois 60602
(312) 793-5472

COUNSEL FOR RESPONDENT.

10.4

TABLE OF CONTENTS

	Page
Statement of Case	1
Summary of Argument	2
Argument	3
I. IT IS UNNECESSARY FOR THE COURT TO GRANT A WRIT OF CERTIORARI TO DECIDE THE ISSUE OF THE RETROACTIVITY OF EDWARDS V. ARIZONA BECAUSE RESPONDENT IS ENTITLED TO SUPPRESSION OF THE VIDEOTAPE PURSUANT TO PRE-EDWARDS CASE LAW	3
II. CERTIORARI SHOULD NOT BE GRANTED SINCE THE JUDGMENT IS SUPPORTED BY AN INDEPENDENT GROUND OF STATE LAW	7
Conclusion	7

TABLE OF AUTHORITIES

	Page
Miranda v. Arizona, 384 U.S. 436 (1966).....	3
Edwards v. Arizona, 451 U.S. 477 (1981).....	3
Michigan v. Mosley, 423 U.S. 96 (1975).....	3
Solem v. Stumes, 79 L. Ed. 2d 579 (1984).....	3
Maryland v. Baltimore Radio Show, 338 U.S. 914 (1949)..	7
People v. Medina, 71 Ill. 2d 254, 375 N.E. 2d 78 (1978).....	5
People v. Washington, 68 Ill. 2d 186, 369 N.E. 2d 57 (1977).....	5
People v. Taylor, 61 Ill. App. 3d 37, 377 N.E. 2d 838 (2nd Dist. 1978), aff'd, 76 Ill. 2d 289, 391 N.E. 2d 366 (1979).....	5
People v. Hammock, 121 Ill. App. 3d 874, 460 N.E. 2d 378 (1st Dist. 1984).....	7

No. 84-177

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

-vs-

JAMES HAMMOCK, JR.,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

James Hammock, Jr. was charged and convicted of the murder of Anthony Taylor. His defense at trial was self-defense. The shooting occurred in a car parked in a liquor store parking lot. The driver of the car testified he exited the car when a "scuffle" started between Hammock, who was standing outside of the car, and Taylor, who was seated in the back seat of the car, and he observed Hammock "come out of his pocket" with a brown object. (R. 603) The prosecution produced no actual eyewitness to the shooting but introduced a videotape in which Hammock described and demonstrated the events of the shooting to Assistant State's Attorney Hartman.

Prior to trial Hammock moved to suppress that videotape as evidence. He testified in support of the motion that he was arrested by the Chicago police on June 23, 1978 for a traffic offense and at that time told the police he would like to see his lawyer. (R. 3,4) He was held at a police station for twelve hours and then taken to the House of Correction where the next day he was arrested by the Brookfield police on a homicide charge. (R.4,5) When advised by those officers of his right to counsel at the House of Correction, Hammock's uncontradicted

testimony was that he told them that his people would have a lawyer at the police station but that the lawyer probably could not get out there until the following day because it was a Sunday and he didn't think he could reach his lawyer on a Sunday. (R. 12)

Assistant State's Attorney Hartman testified that he saw Hammock after he had been transported to the Brookfield police station. He ascertained that Hammock had been advised of his rights by the police and then readvised Hammock of his rights himself. (R 63) When he asked Hammock if he wanted to make a statement, Hammock said he did not and that he wanted a lawyer. Hartman asked him who his lawyer was and when Hammock mentioned Mr. Blair, Hartman told him he could call Blair if he wanted to. Hammock indicated he didn't know the number. Hartman obtained Blair's number for Hammock. (R. 65) Hammock commented that he had been treated like a man and he had expected rough treatment. Hartman told him there was no reason to expect that, that it wasn't supposed to be done. Hartman testified Hammock said, "I'll tell you what happened." Hartman asked him if he wanted to have his lawyer present and Hammock said, "No, I'll tell you what happened right now." (R. 66) However, Hammock testified he made a statement because the prosecutor led him to believe he was friendly with his lawyer and he would most likely get probation. (R. 33, 44)

The trial court denied Hammock's motion to suppress but the Appellate Court reversed on the ground that the statement had been obtained in violation of Hammock's fifth amendment right to have counsel present during interrogation and because the prosecution had failed to preserve and produce a videotape on which Hammock's initial statement had been recorded.

SUMMARY OF ARGUMENT

This is not an appropriate case to decide the question left unresolved in Solem v. Stumes, 79 L. Ed. 2d 579 (1974), i.e., whether the rule pronounced in Edwards v. Arizona, 451 U.S. 477 (1981) should be applied to cases which were not yet final when Edwards was decided, because respondent was entitled to

suppression of the videotape under pre-Edwards case law, petitioner contends no Edwards violation occurred, and the Appellate Court ruled that the statement should have been suppressed for reasons independent of the Edwards violation, which have not been questioned by petitioner in this Court.

ARGUMENT

I. IT IS UNNECESSARY FOR THIS COURT TO GRANT A WRIT OF CERTIORARI TO DECIDE THE ISSUE OF THE RETROACTIVITY OF EDWARDS V. ARIZONA, BECAUSE RESPONDENT IS ENTITLED TO SUPPRESSION OF THE VIDEOTAPE PURSUANT TO PRE-EDWARDS CASE LAW.

In Miranda v. Arizona, 384 U.S. 436 (1966) this Court held that if an individual, after having been advised of his rights, states he wants an attorney, the interrogation must cease until an attorney if present. If the individual cannot obtain an attorney and indicates that he wants one before speaking with the police, they must respect his decision to remain silent. If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel 384 U.S. 474, 475. Respondent submits that application of these principles to the facts of the case at bar leads to the conclusion that the videotape should have been suppressed and thus it is inappropriate and unnecessary for this Court to grant a writ of certiorari to decide whether respondent was entitled to relief pursuant to Edwards v. Arizona, 451 U.S. 477 (1981).

While expressly noting in Michigan v. Mosely, 423 U.S. 96, 103 n. 10 (1975) that the procedural safeguards triggered by a request to remain silent and a request for an attorney are different, this Court held in Solem v. Stumes, 79 L. Ed. 2d 579, 590 (1984) that much of the logic and language of Mosely could be applied to invocation of the right to counsel. In Mosely, defendant was arrested for robbery and, upon being advised of his Miranda warnings, exercised his right to remain silent.

Interrogation ceased immediately and defendant was taken to a cell. A few hours later a different officer removed defendant from the cell and questioned him regarding an unrelated homicide after advising defendant of his rights. Defendant did not assert during this interrogation that he desired to consult with counsel or indicate he did not want to discuss the homicide. This Court stated that the admissibility of defendant's statement so obtained depends on whether his right to cut off questioning was "scrupulously honored" and concluded it had been because the first officer had immediately ceased interrogation upon being advised that defendant did not want to be questioned and made no attempt to resume questioning, after a significant time interval defendant was questioned by a different officer about an unrelated offense, and prior to that second interrogation defendant was fully advised of his rights and chose not to exercise them. The fact that the police had not failed to honor defendant's decision to remain silent by refusing to discontinue the interrogation upon request or by persisting in repeated efforts to wear down his resistance and make him change his mind was found to be significant. 423 U.S. 105, 106.

By contrast, in the case at bar the facts demonstrate that the prosecution did not scrupulously honor respondent's invocation of his right to counsel but persisted in repeated efforts to wear down his resistance and make him change his mind. Respondent had advised both the Chicago and Brookfield police of his desire for counsel. After invoking his right to counsel when given the warnings by the Brookfield police, those officers took respondent into their custody from the House of Correction and transported him to the Brookfield police station where he was confronted by Assistant State's Attorney Hartman. There is no evidence of any significant time lapse between respondent's exercise of his right to counsel and his interrogation by Hartman. The prosecution was aware that respondent wanted counsel present prior to any questioning and that respondent did not believe it possible that he could contact his counsel on that day, a Sunday, yet Hartman initiated an interview with respondent. Respondent was not questioned about a separate

unrelated crime but for the same offense for which he had been arrested by the Brookfield police and regarding which he had declined to make a statement without counsel. As the Illinois Appellate Court noted, the ploy was to have an array of personalities repeat the Miranda warnings to respondent until he had a different reaction to a particular, perhaps more sophisticated interrogator and agreed to make a statement. 460 N.E. 2d 382. It would indeed be ironic if the prosecution were permitted to use their duty to advise an accused of his rights to engage in the kind of psychological persuasion the warnings were intended to eliminate.

Decisions of the Illinois Supreme Court support the conclusion that respondent's statement would have been held inadmissible prior to this Court's decision in Edwards. See People v. Medina, 71 Ill. 2d 254, 375 N.E. 2d 78 (1978) (statement suppressed where defendant arrested between 2 and 3:00 a.m., taken to a police station and advised of his rights; defendant asked for an attorney and interrogation ceased until 8:00 a.m. when defendant interrogated by another officer and made a statement); People v. Washington, 68 Ill. 2d 186, 369 N.E. 2d 57 (1977) (defendant arrested at 9:00 p.m., advised of his rights and made statement; at 1:00 a.m. placed in a cell and when advised of rights at 9:30 a.m. asked for counsel but his attempts to reach counsel were unsuccessful; at 5:30 p.m. he was advised of his rights and said he did not want to make a statement but wanted to talk to a priest and psychiatrist; after talking with the police chaplain defendant made a statement after stating he understood his rights; statement held inadmissible); People v. Taylor, 61 Ill. App. 3d 37, 377 N.E. 2d 838 (2nd Dist. 1978), aff'd, 76 Ill. 2d 289, 391 N.E. 2d 366 (1979) (statement made by defendant on day after requests for counsel ignored held inadmissible even though defendant did not request counsel after being advised of his rights before giving statement).

Curiously, while asking this Court to grant a writ of certiorari to decide whether Edwards should have any retrospective application, the petitioner devotes a large portion of its argument to the contention that no Edwards violation occurred.

(Petition, pp. 9, 10) It appears anomolous for petitioner to ask this Court to take this case to decide a question which it does not contend is presented by the facts of the case. The petitioner's position, that even were Edwards applied retrospectively to cases on direct review respondent is entitled to no relief from his conviction, should persuade this Court that the present case is not an appropriate one to decide the sole question posed by petitioner.

II. CERTIORARI SHOULD NOT BE GRANTED SINCE THE JUDGMENT IS SUPPORTED BY AN INDEPENDENT GROUND OF STATE LAW.

If a decision of a state court can be sustained on an independent ground of state law, it is not subject to review by this Court even though the court also passed on issues of federal law. Maryland v. Baltimore Radio Show, 338 U.S. 912, 918 (1949). The Illinois Appellate Court reversed respondent's conviction and remanded for a new trial on the ground that respondent's videotaped statement and demonstration was erroneously admitted. It found the admission erroneous not only because the statement was obtained in violation of respondent's fifth amendment right to have counsel present at the interrogation but because the prosecution failed to produce the first videotape which had been requested by defense counsel. People v. Hammock, 121 Ill. App. 3d 874, 460 N.E. 2d 378,384 (1st Dist. 1984). The Appellate Court relied on no provision of federal law or the Constitution to support this result. Petitioner has not sought review of this portion of the Appellate Court's decision in this Court. Even if this Court would agree that the videotape was not subject to suppression pursuant to Edwards, respondent would nonetheless be entitled to the relief awarded by the Appellate Court on an alternative ground.

CONCLUSION

Respondent, James Hammock, Jr., prays that this Court deny the petition for writ of certiorari to the Appellate Court of Illinois, First District.

Respectfully submitted,

STEVEN CLARK
Assistant Appellate Defender

PATRICIA UNSINN
Assistant Appellate Defender
Office of the State Appellate Defender
109 North Dearborn Street
8th Floor
Chicago, Illinois 60602
(312) 793-5472

COUNSEL FOR DEFENDANT-APPELLANT